

#32

# HOGAN & HARTSON

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

555 THIRTEENTH STREET, NW  
WASHINGTON, DC 20004-1109  
202/637-5800

8300 GREENSBORO DRIVE  
McLEAN, VIRGINIA 22102  
703/848-2600

6701 ROCKLEDGE DRIVE  
BETHESDA, MARYLAND 20817  
301/493-0030

(703)847-6025

1-352A021

RECORDATION NO. 13659-F  
FILED 1425

DEC 18 1991 - 3 30 PM

December 18, 1991

INTERSTATE COMMERCE COMMISSION

Mr. Sydney L. Strickland  
Secretary  
Interstate Commerce Commission  
12th & Constitution Avenue, N.W.  
Washington, D.C. 20423  
ATTN: Mrs. Mildred Lee

RECORDATION NO. 13659-F  
FILED 1425

DEC 18 1991 - 3 30 PM

INTERSTATE COMMERCE COMMISSION

Dec 18 3 30 PM '91  
NOT RECORDED UNIT

Dear Mr. Strickland:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two original executed copies and one notarized photostatic copy of the following document:

First Amendment to Trust Agreement  
executed by BNY Leasing Corporation, as Owner,  
and LaSalle National Bank, as Owner Trustee,  
dated December 16, 1991.

Attached to the First Amendment to Trust Agreement are the following documents:

- Schedule 1: Trust Agreement dated as of May 1, 1982 between AIG Equipment Lessors, Inc. (Owner) and Exchange National Bank of Chicago (Owner Trustee).
- Schedule 2: Conditional Sale Agreement dated as of May 1, 1982 between Exchange National Bank of Chicago (as Vendee) and each of North American Car Corporation and Union Tank Car Company (as Vendors). [Recordation No. 13659].
- Schedule 3: Lease of Railroad Equipment dated as of May 1, 1982 between Celanese Corporation (as Lessee) and Exchange National Bank of Chicago (as Lessor). [Recordation No. 13659-B]

*Mildred Lee*

HOGAN & HARTSON

Mr. Sydney L. Strickland  
December 18, 1991  
Page 2

- Schedule 4: Assignment of Lease and Agreement dated as of May 1, 1982 between Exchange National Bank of Chicago (as Lessor) and Mercantile-Safe Deposit and Trust Company (as Vendor).  
[Recordation No. 13659-C]

The names and addresses of the parties to the enclosed First Amendment to Trust Agreement are:

Owner: BNY Leasing Corporation  
1290 Avenue of the Americas  
New York, New York 10104

Owner Trustee: LaSalle National Bank  
135 South LaSalle Street  
Chicago, Illinois 60603

A description of the railroad equipment covered by the enclosed First Amendment to Trust Agreement is set forth in Annex B to the Conditional Sale Agreement, Recordation No. 13659, dated May 1, 1982. The enclosed document should be filed with Recordation File No. 13659.

Also enclosed are two checks payable to the Interstate Commerce Commission totalling \$32.00, to cover the required recordation fee for the First Amendment to Trust Agreement, and Schedule 1: Trust Agreement. Kindly return one stamped copy of the enclosed document and one stamped photostatic copy of this letter by return messenger.

Please feel free to contact me with any questions which you may have concerning the above.

Sincerely,



Steven E. Keller

Enclosures

cc: Sheila A. Glancy, Esq.  
Patrick M. Raher, Esq.

KJD:sfk 7193w

Interstate Commerce Commission  
Washington, D.C. 20423

12/18/91

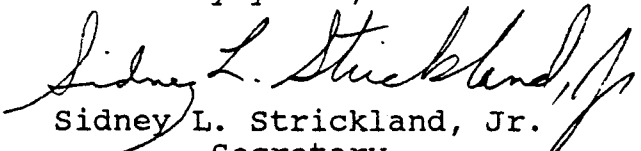
OFFICE OF THE SECRETARY

Steven E. Keller  
Hogan & Hartson  
8300 Greenboro Drive  
McLean, Virginia 22102

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/18/91 at 3:35pm, and assigned recordation number(s). 13659-E & 13659-F

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

REGISTRATION NO.

13659 E

FILED 1425

DEC 18 1991 3 21 PM

SCHEDULE 1

INTERSTATE COMMERCE COMMISSION

FIRST AMENDMENT TO  
TRUST AGREEMENT

---

---

TRUST AGREEMENT

Dated as of May 1, 1982

between

AIG EQUIPMENT LESSORS, INC.,  
Owner,

and

EXCHANGE NATIONAL BANK OF CHICAGO,  
Owner Trustee

---

---

## TRUST AGREEMENT

THIS TRUST AGREEMENT dated as of May 1, 1982, between AIG EQUIPMENT LESSORS, INC., a Delaware corporation (hereinafter called the Owner), and EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association (hereinafter with its successors and assigns called the Owner Trustee).

W I T N E S S E T H :

### ARTICLE I

#### Authority to Execute Documents

#### Declaration of Trust

Section 1.01. The Owner hereby authorizes and directs the Owner Trustee (i) to execute and deliver the Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) among Celanese Corporation (hereinafter called the Lessee), the Owner, the Owner Trustee, Mercantile-Safe Deposit and Trust Company (hereinafter, as agent under the Participation Agreement and as assignee of the Conditional Sale Agreement defined below, called the Agent), and State of Wisconsin Investment Board (hereinafter called the Investor); (ii) to execute and deliver the Conditional Sale Agreement dated as of the date hereof (hereinafter called the CSA) with North American Car Corporation and Union Tank Car Company (hereinafter called the Builders); (iii) to execute and deliver the Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease) between the Owner Trustee, as lessor, and the Lessee, as lessee; (iv) to execute and deliver an Assignment of Lease and Agreement dated as of the date hereof (hereinafter called the Lease Assignment) between the Owner Trustee and the Agent; (v) to execute and deliver each document referred to in the CSA, the Participation Agreement, the Lease or the Lease Assignment to which the Owner Trustee is to be a party (the CSA, Participation Agreement, Lease and Lease Assignment and such documents referred to therein together with any amendments or supplements thereto, and all other documents except this Trust Agreement and any amendments or supplements hereto, being hereinafter collectively called

the Trust Documents); (vi) to authorize a representative of the Owner Trustee (who may be an employee of the Lessee) to accept delivery of each item of railroad equipment from time to time delivered to the Owner Trustee under and in accordance with the terms of the CSA (all such equipment from time to time delivered and accepted under the CSA being hereinafter collectively called the Equipment), and to accept delivery, from such representative or directly, of any and all bills of sale and invoices in favor of the Owner Trustee covering any Equipment; (vii) to pay to the Builders or the Agent in respect of the purchase price of the Equipment pursuant to the CSA such funds as the Owner shall from time to time furnish the Owner Trustee for such purpose; (viii) to exercise, subject to the terms of this Trust Agreement, the rights and perform the duties of the Owner Trustee under the Trust Documents; and (ix) to take such other action in connection with any of the foregoing as the Owner may from time to time direct.

Section 1.02. The Owner Trustee hereby declares that it will hold all estate, right, title and interest of the Owner Trustee in and to the Equipment and the Trust Documents, including, without limitation, all amounts of rent, insurance proceeds, indemnity (other than any indemnity payable to the Owner Trustee in its individual capacity) and other payments of any kind for or with respect to any Equipment (all such estate, right, title and interest being hereinafter called the Trust Estate), upon the trusts hereinafter set forth for the use and benefit of the Owner, subject, however, to the obligations of the Owner Trustee to make payment to the Agent in accordance with the terms of, and to the extent expressly provided in, Article II hereof.

Section 1.03. The Owner agrees with the Owner Trustee and the Builders, as a third-party beneficiaries, to provide the Owner Trustee with funds sufficient to make payments to the Agent or the Builders to the extent required by subparagraph (a) of Paragraph 4.3 of the CSA (subject to the terms and conditions of the Participation Agreement and the CSA) so as to effect the acquisition of the Equipment by the Owner Trustee.

Unless prohibited by law, the Owner may perform any obligation of the Owner Trustee under the Trust Documents. The Owner agrees with the Owner Trustee and the Investor and the Agent, as third-party beneficiaries, to take all necessary actions, including, without limitation, payment of funds, to enable the Owner Trustee to discharge its obligations pursuant to the proviso to paragraph 13.3 of the CSA

insofar as such obligations relate to taxes, claims, liens, charges or security interests claimed by any party from, through or under such Owner; provided, however, that the Owner shall not be obligated to take any action or pay funds as may be necessary to duly discharge any liens or encumbrances resulting from claims against the Owner Trustee not related to the ownership or leasing of, or the security interest of the Agent in, the Units and the Trust Estate and which the Owner Trustee is obligated duly to discharge at its own cost and expense pursuant to the last sentence of Section 3.04 hereof.

## ARTICLE II

### Receipt, Distribution and Application of Income From the Trust Estate

Section 2.01. (a) The parties acknowledge that the Lease will be assigned to the Agent pursuant to the Lease Assignment which provides that rentals and certain other sums payable by the Lessee under the Lease are to be paid to the Agent while the Lease Assignment is in effect. If, pursuant to the terms of the Lease and the Lease Assignment, the Owner Trustee receives any amounts of money from the Agent, the Owner Trustee shall forthwith upon such receipt apply such amounts as follows:

(i) to the payment of any unpaid fees of the Owner Trustee, payable by the Owner, then due and owing together with the necessary and reasonable expenses of the administration of the trusts hereby created, and

(ii) the balance, if any, to the Owner.

(b) In the event that any amounts constituting income and proceeds from the Equipment (as defined in paragraph 4.8 of the CSA) are received by the Owner Trustee under the Lease directly from the Lessee while any CSA Indebtedness (as defined in the CSA) or any other obligations under the CSA are outstanding and the CSA is in force, such amounts shall be applied as follows:

(i) in satisfaction of the obligations, if any, of the Owner Trustee under the CSA to the extent such obligations are then due,

(ii) to the payment of any unpaid fees of the Owner Trustee, payable by the Owner, then due and owing together with the necessary and reasonable expenses of the administration of the trusts hereby created, and

(iii) the balance, if any, to the Owner.

(c) In the event that any amounts are received by the Owner Trustee under the Lease directly from the Lessee with respect to any unit of Equipment after all of the CSA Indebtedness and interest thereon has been paid in full, and the CSA is no longer in effect, such amounts, after payment of any unpaid fees of the Owner Trustee, payable by the Owner, then due and owing together with the necessary and reasonable expenses of the administration of the trusts hereby created, shall forthwith be paid over to the Owner, in immediately available funds.

Section 2.02. The Owner Trustee shall, subject to the receipt of the necessary funds, make distributions or cause distributions to be made pursuant to this Article II as follows: (a) to the Agent pursuant to this Article II in the manner specified in the Trust Documents, (b) to the Owner, at 70 Pine Street, New York, New York 10270, Attention of Assistant Manager, Domestic Investment Department, or as the Owner may otherwise direct in writing, and (c) to the Lessee, at 1211 Avenue of the Americas, New York, New York 10036, Attention of Assistant Treasurer, Finance/Treasury.

### ARTICLE III

#### Duties of the Owner Trustee

Section 3.01. In the event the Owner Trustee shall have knowledge of an Event of Default under the Lease or an event of default under the CSA, the Owner Trustee shall give prompt notice in writing thereof to the Owner, whether or not the same shall have been remedied before the giving of such notice. Subject in all respects to the terms and provisions of the CSA and the rights of the Agent thereunder, and subject further to the terms of Section 3.03 hereof, the Owner Trustee shall take such action, or refrain from taking such action, with respect to such an Event of Default under the Lease or event of default under the CSA as the Owner shall direct by written instructions to the Owner Trustee, including, without limitation, the application of moneys furnished by the Owner and moneys in the Trust Estate available for the purpose to make the payment of the principal of and interest on the CSA Indebtedness pursuant to the CSA. If the Owner Trustee shall not have received instructions as above provided within 30 days after mailing notice of such Event of Default or event of default to the Owner, the Owner Trustee may, subject to instructions received pursuant to the preceding sentence, take such action, or refrain from



taking such action, but shall be under no duty to take or refrain from taking any action, with respect to such Event of Default or event of default, not inconsistent with the provisions of the CSA, as it shall deem advisable in the best interests of the Owner. The Trustee shall not be deemed to have knowledge of such an Event of Default or event of default (or any event which with notice or lapse of time or both would constitute an Event of Default or event of default) unless notified in writing by the Owner, the Lessee or the Agent or unless an officer or employee in the Corporate Trust Department of the Trustee shall have actual knowledge thereof.

Section 3.02. Subject in all respects to the terms and provisions of the Trust Documents and the rights of the Agent and the Lessee, respectively, thereunder, and subject further to the terms of Sections 3.01 and 3.03 hereof, upon the written request at any time and from time to time of the Owner, the Owner Trustee will take such of the following actions as may be specified in such request: (i) give such notice or direction or exercise such right or power under the Trust Documents with respect thereto or to any unit of Equipment, including, without limitation, the right to transfer, assign or convey the Owner Trustee's interest in the Trust Documents or any unit of Equipment, as shall be specified in such request; and (ii) after the expiration or earlier termination of the Lease with respect to a unit of Equipment, and the transfer to the Owner Trustee of the Agent's interests in such unit under the CSA, convey all of the Owner Trustee's right, title and interest in and to such unit of Equipment for such amount, on such terms and to such purchaser or purchasers as shall be designated in such request, or retain, lease or otherwise dispose of such unit of Equipment as shall be designated in such request. No such request by the Owner shall be inconsistent with the terms and provisions of the Trust Documents and the rights of the parties thereto or with any right or immunity of the Owner Trustee hereunder.

Section 3.03. The Owner Trustee shall not be required to take any action under Section 3.01 or Section 3.02 hereof unless the Owner Trustee shall have been indemnified by the Owner, in substance and form reasonably satisfactory to the Owner Trustee, against any liability, cost or expense (including reasonable counsel fees) which may be incurred in connection with any such action. The Owner Trustee shall not be required to take any action under Section 3.01 or Section 3.02 hereof, nor shall any other provision of this Trust Agreement be deemed to impose a duty on the Owner Trustee to take any action, if the Owner Trustee shall determine, or shall have been advised by counsel, that such action is likely to result in personal liability or is contrary to the terms of this Trust Agreement or the Trust Documents or is otherwise contrary to law.

Section 3.04. It is agreed that the Owner Trustee shall not have any duty or obligation to manage, control, use, sell, dispose of or otherwise deal with any unit of Equipment or any other part of the Trust Estate, or to otherwise take or refrain from taking any action under, or in connection with, the Trust Documents, except as expressly provided by the terms of this Trust Agreement or as expressly provided in written instructions from the Owner received pursuant to the terms of Section 3.01 or Section 3.02 hereof; the Trustee shall not be obligated to expend its own funds or to incur any obligation in its individual capacity in the performance of its obligations under this Trust Agreement or the Trust Documents, except as otherwise expressly provided; and no implied duties or obligations shall be read into this Trust Agreement against the Owner Trustee; provided, however, that nothing contained in this Article III shall limit in any manner (a) the obligation of the Owner Trustee to perform and observe all of the terms and provisions of the CSA imposed upon the Owner Trustee thereunder, subject to the limitations on such obligations thereunder, including, without limitation, Articles 4 and 23 thereof and the Owner Trustee's immunities thereunder, or (b) the obligations of the Owner Trustee set forth in Article II hereof. The Owner Trustee nevertheless agrees that it will, in its individual capacity and at its own cost and expense, promptly take such action as may be necessary duly to discharge any liens or encumbrances on any part of the Trust Estate which result from claims against the institution acting as Owner Trustee not related to the ownership of the Equipment or the administration of the Trust Estate or any other transaction pursuant to this Trust Agreement or the Trust Documents.

Section 3.05. The Owner Trustee agrees that it will not manage, control, use, sell, dispose of or otherwise deal with any unit of Equipment or any other part of the Trust Estate except (i) as required by the terms of the Trust Documents or (ii) in accordance with the powers granted to, or the authority conferred upon, the Owner Trustee pursuant to this Trust Agreement or (iii) in accordance with written instructions from the Owner pursuant to Section 3.01 or Section 3.02 hereof.

Section 3.06. In the event that the Owner Trustee receives any notice in respect of the Trust Documents or the Equipment, the Owner Trustee shall promptly transmit such notice to the Owner in accordance with the provisions of Section 9.04 hereof.

Section 3.07. The Owner Trustee shall keep all appropriate books and records relating to the Trust Estate,

including the receipt and disbursement of all moneys under this Trust Agreement and any Trust Document.

The Owner Trustee, upon the request of the Owner, shall request from the Lessee and, upon receipt, furnish to the Owner all information which the Owner Trustee is permitted to obtain from the Lessee pursuant to the terms of the Lease and which is required by the Owner in connection with the preparation of its federal income tax returns. The Owner Trustee shall not be personally liable for any tax due and payable in connection with this Trust Agreement, any Trust Document or the transactions contemplated by any thereof.

#### ARTICLE IV

##### The Owner Trustee

Section 4.01. The Owner Trustee accepts the trust hereby created and agrees to perform the same but only upon the terms of this Trust Agreement. The Owner Trustee shall not be answerable or accountable under any circumstances, except in the case of handling funds, for failure to act as a prudent man would act in the handling of his own funds under similar circumstances and otherwise for its own wilful misconduct or gross negligence.

Section 4.02. Except in accordance with written instructions furnished pursuant to Section 3.02 hereof, and without limitation of the generality of Section 3.04 hereof, the Owner Trustee shall have no duty (i) to see to any recording, filing or depositing of the Trust Documents or any thereof or of this Trust Agreement, or to see to the maintenance of any such recording or filing or depositing or to any rerecording, refiling or redepositing of any thereof, (ii) to see to any insurance on the Equipment or to effect or maintain any such insurance, (iii) to see to the payment or discharge of any tax, assessment, or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against, any part of the Trust Estate, (iv) to confirm or verify any reports of the Lessee other than to furnish the Owner with a copy of each such report furnished the Owner Trustee by the Lessee pursuant to § 8 of the Lease, or (v) to inspect the Equipment at any time or ascertain or inquire as to the performance or observance of any of the Lessee's covenants under the Lease with respect to the Equipment. Notwithstanding the foregoing, the Owner Trustee will furnish to the Owner, promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, certificates, financial statements and other instruments furnished to the Owner Trustee under the Trust Documents.

Section 4.03. THE OWNER TRUSTEE DOES NOT MAKE (NOR HAS IT MADE NOR SHALL IT BE DEEMED TO MAKE OR HAVE MADE) ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT OR ANY COMPONENT THEREOF, AND THE OWNER TRUSTEE DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE EQUIPMENT OR ANY COMPONENT THEREOF FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE EQUIPMENT OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT OR ANY COMPONENT THEREOF WHATSOEVER, except that the Owner Trustee hereby represents and warrants to the Owner that upon delivery to it of any unit of Equipment the Owner Trustee shall have received whatever title was conveyed to it by the Builder thereof and that the Equipment shall be free of liens and encumbrances resulting from claims against the institution acting as Owner Trustee not related to the ownership of the Equipment or the administration of the Trust Estate or any other transaction pursuant to the Trust Agreement or the Trust Documents.

Section 4.04. No moneys received by the Owner Trustee hereunder need be segregated in any manner except to the extent required by law and the Owner Trustee shall not be liable for any interest thereon.

Section 4.05. Except as provided in Section 4.01 hereof, the Owner Trustee shall incur no liability to anyone in acting in good faith upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper reasonably believed by it to be genuine and believed by it to be signed by the proper party or parties. The Owner Trustee may accept a copy of a resolution of the Board of Directors of any corporate party, certified by the Secretary, an Assistant Secretary, an attesting Secretary, a Vice President, an Assistant Vice President or a Corporate Trust Officer of said party, as duly adopted and in full force and effect, as conclusive evidence that such resolution has been duly adopted by said Board and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically described herein, the Owner Trustee may for all purposes hereof rely on a certificate, signed by or on behalf of the proper party executing the same, as to such fact or matter, and such certificate shall constitute full protection to the Owner Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. In the administration of the trusts hereunder, the Owner

Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through other agents or attorneys and may, at the expense of the Trust Estate, seek advice of counsel, accountants and other skilled persons to be selected and employed by it, and the Owner Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons.

Section 4.06. In accepting the trusts hereby created, the Owner Trustee acts solely as trustee hereunder and not in its individual capacity; and all persons, other than the Owner, having any claim against the Owner Trustee by reason of the transactions contemplated hereby, shall look only to the Trust Estate for payment or satisfaction thereof.

Section 4.07. The Owner Trustee, or any successor thereto, from time to time serving hereunder shall have the absolute right, acting independently, to take any action and to exercise any right, remedy, power or privilege conferred upon the Owner Trustee hereunder; and any action taken by the Owner Trustee from time to time serving hereunder shall be binding upon the Owner Trustee and no person dealing with the Owner Trustee from time to time serving hereunder shall be obligated to confirm the power and authority of the Owner Trustee to act.

Section 4.08. To the extent not otherwise received, the Owner Trustee shall be entitled to receive from the Owner reasonable compensation for its services and to be reimbursed for its reasonable expenses hereunder and under the Trust Documents.

## ARTICLE V

### Indemnification of Owner Trustee by the Owner

Section 5.01. The Owner hereby agrees, whether or not any of the transactions contemplated hereby shall be consummated, to assume liability for, and does hereby indemnify, protect, save and keep harmless the Owner Trustee and its respective successors, assigns, legal representatives, agents and servants, from and against any and all liabilities, obligations, losses, damages, penalties, taxes (such term "taxes" or the term "tax" as used in this Section 5.01 shall

include all taxes specifically related to this Trust Agreement and the Trust Estate created hereby excluding, however, any income taxes on fees or other compensation received by the Owner Trustee for its services as Owner Trustee), claims, actions, suits, costs, expenses or disbursements (including legal fees and expenses) of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Owner Trustee (whether or not also indemnified against by the Lessee or any sublessee under the Lease or any sublease or also indemnified against by the Builders or any other person) in any way relating to or arising out of this Trust Agreement or the Trust Documents, or any document contemplated thereby, or the performance or enforcement of any of the terms of any thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, possession, use, operation, condition, sale, return or other disposition of the Equipment (including, without limitation, latent and other defects, whether or not discoverable, and any claim for patent, trademark or copyright infringement), or in any way relating to or arising out of the administration of the Trust Estate or the action or inaction of the Owner Trustee hereunder, except, in the case of handling of funds, for failure to act as a prudent man would act in the handling of his own funds under similar circumstances, and otherwise only in the case of wilful misconduct or gross negligence on the part of the Owner Trustee in the performance of its duties hereunder or as a result of a breach of any representation made by the Owner Trustee in this Trust Agreement or the Trust Documents for which the Owner Trustee is liable in its individual capacity. The indemnities contained in this Section shall survive the termination of this Trust Agreement and the resignation or removal of the Trustee. In addition, if necessary, the Owner Trustee shall be entitled to indemnification from the Trust Estate for any liability, obligation, loss, damage, penalty, tax, claim, action, suit, cost, expense or disbursement indemnified against pursuant to this Section 5.01 to the extent not reimbursed by the Lessee, the Builders, the Owner or any other person; and, to secure the same, the Owner Trustee shall have a lien on the Trust Estate prior to any interest therein of the Owner.

## ARTICLE VI

### Transfer of Owner's Interest

Section 6.01. The Owner shall not assign, convey or otherwise transfer any of its respective right, title and

interest in and to this Trust Agreement or the Trust Estate, except that all, but not less than all, of the Owner's right, title and interest in and to this Trust Agreement or the Trust Estate may be assigned, conveyed or transferred by the Owner to (i) any bank or trust company organized under the laws of the United States of America or any State thereof, (ii) any other corporation organized under the laws of the United States of America or any State thereof which at the time of the transfer has (or, if its parent guarantees all the obligations of such corporation under this Trust Agreement and the Participation Agreement, such parent corporation has) outstanding publicly held unsecured debt securities rated A or better by a nationally recognized rating service or (iii) any corporation which holds all of the voting securities of the Owner or any subsidiary or affiliate wholly owned or otherwise of such corporation or, with the prior written consent of the Owner Trustee and the Agent, to any other institution, corporation or person (such institution to whom such interest in the Trust Estate may be assigned, conveyed or transferred being hereinafter referred to as the "Transferee"). In the event of any such assignment, conveyance or transfer, the Transferee shall become a party to this Trust Agreement and will agree to be bound by all the terms of and will undertake all of the obligations of the Owner contained in this Trust Agreement and the Participation Agreement in such manner as is satisfactory to the Owner Trustee. No such assignment, conveyance or transfer shall violate any provision of law or regulation or create a relationship which would be in violation thereof. The Owner Trustee shall not be on notice of or otherwise be bound by any such assignment, conveyance or transfer unless and until it shall have received an executed counterpart of the instrument of such assignment, conveyance or transfer. If the prior written consent of the Owner Trustee and the Agent is required or in the case of a transfer to any corporation which holds all of the voting securities of the Owner or any subsidiary or affiliate wholly owned or otherwise of such corporation, until the Owner shall have received the prior written consent of the Owner Trustee and the Agent (such consent not to be unreasonably withheld), without limiting the primary liability of the Transferee, the Owner shall remain secondarily liable to perform the obligations undertaken but not performed by such Transferee. Upon any such disposition by the Owner to a Transferee as above provided, such Transferee shall succeed to the interests of the Owner and shall be deemed an "Owner" for all purposes hereof, and shall be deemed to have made all the payments previously made by his predecessor; and each reference herein to the Owner shall thereafter be deemed to include such Transferee.

Section 6.02. If any Owner shall propose to transfer its interests hereunder pursuant to Section 6.01 hereof, it shall give written notice to the Owner Trustee and the

Agent, specifying the name and address of the proposed Transferee, and enclosing the agreement or agreements referred to in said Section 6.01.

Section 6.03. For purposes of this Trust Agreement, reference to the consent or request of, or approval, authorization or direction by, the Owner shall mean the written consent or request of, or approval, authorization or direction by, the Owner.

## ARTICLE VII

### Co-Owner Trustees and Successor Owner Trustee

Section 7.01. (a) The Owner Trustee or any successor thereto may resign at any time without cause by giving at least 30 days' prior written notice to the Owner, such resignation to be effective on the date specified in such notice. In addition, the Owner may at any time remove the Owner Trustee without cause by an instrument in writing delivered to the Owner Trustee. In the case of the resignation or removal of any Owner Trustee, the Owner shall, prior to the date specified in such notice or prior to such removal, appoint a successor Owner Trustee having the qualifications set forth in paragraph (c) of this Section 7.01 by an instrument signed by the Owner. If the Owner shall not have appointed a successor Owner Trustee within 10 days after such resignation or removal, the Owner Trustee, if any, or the Agent may apply to any court of competent jurisdiction to appoint a successor Owner Trustee to act until such time, if any, as a successor shall have been appointed by the Owner as above provided. Any successor Owner Trustee so appointed by such court shall immediately and without further act be superseded by any successor Owner Trustee appointed by the Owner within one year from the date of the appointment by such court. Any banking institution or trust company becoming a successor Owner Trustee hereunder shall be deemed the "Owner Trustee" for all purposes hereof, and each reference herein to the Owner Trustee shall thereafter be deemed a reference to such banking institution or trust company.

(b) Any successor Owner Trustee, whether appointed by a court or by the Owner, shall execute and deliver to the predecessor Owner Trustee an instrument accepting such appointment, and thereupon such successor Owner Trustee, without further act, shall become vested with all the estates, properties, rights, powers, duties and trusts of the predecessor Owner Trustee in the trust hereunder with like effect as if originally named as Owner Trustee herein; but nevertheless upon the written request of such successor Owner Trustee,



such predecessor Owner Trustee shall execute and deliver an instrument transferring to such successor Owner Trustee, upon the trust herein expressed, all the estates, properties, rights, powers and trusts of such predecessor Owner Trustee, and such predecessor Owner Trustee shall duly assign, transfer, deliver and pay over to such successor Owner Trustee any property or moneys then held by such predecessor Owner Trustee upon the trusts herein expressed.

(c) Any successor Owner Trustee, however appointed, shall be a bank or trust company having a combined capital and surplus of at least \$50,000,000, if there is such an institution willing and able and legally qualified to act as Owner Trustee on reasonable and customary terms.

(d) Any corporation into which the Owner Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Owner Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Owner Trustee may be transferred, shall, subject to the terms of this Section 7.01, be the Owner Trustee under this Trust Agreement without any further act.

(e) In the event any successor Owner Trustee is appointed hereunder, the fees theretofore paid to the Owner Trustee shall be prorated between the Owner Trustee and the successor Owner Trustee for any unexpired portion of the period to which such fees relate.

Section 7.02. (a) At any time or times, for the purpose of meeting the legal requirements of any jurisdiction in which any part of the Trust Estate may at the time be located, the Owner Trustee shall have power to appoint one or more persons to act as co-trustee of all or any part of the Trust Estate or to act as separate trustee of any property constituting part thereof, in either case with such powers as may be provided in the instrument of appointment, and to vest in such person or persons any property, title, right or power deemed necessary or desirable, subject to the remaining provisions of this Section 7.02.

(b) Every separate trustee or co-trustee shall, to the extent permitted by law, be appointed subject to the

following terms:

(i) The rights, powers, duties and obligations conferred or imposed upon any such separate trustee or co-trustee shall be the same as those conferred or imposed upon the Owner Trustee, and such rights and powers shall be exercisable only jointly with the Owner Trustee, except to the extent that, under any law of any jurisdiction in which any particular act or acts are to be performed, the Owner Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights and powers shall be exercised by such separate trustee or co-trustee subject to the provisions of Section 7.02(b)(iv).

(ii) The Owner Trustee may at any time, by an instrument in writing executed by it, accept the resignation of or remove any separate trustee or co-trustee appointed under this Section 7.02.

(iii) No trustee hereunder shall be liable by reason of any act or omission of any other trustee hereunder unless such other trustee has a combined capital and surplus less than \$10,000,000.

(iv) No power given to such separate trustee or co-trustee shall be separately exercised hereunder by such separate trustee or co-trustee except with the consent in writing of the Owner Trustee, anything herein contained to the contrary notwithstanding.

(c) Upon the acceptance in writing of such appointment by any such separate trustee or co-trustee, he or it shall be vested with the estates or property specified in the instrument of appointment subject to all the terms of this Trust Agreement.

## ARTICLE VIII

### Supplements and Amendments to this Trust Agreement and Other Documents

Section 8.01. At any time and from time to time, upon the written request of the Owner, (i) the Owner Trustee and the Owner shall execute a supplement hereto for the purpose of adding provisions to, or changing or eliminating provisions of, this Trust Agreement as specified in such

request; and (ii) the Owner Trustee shall enter into or consent to such written amendment of or supplement to the Trust Documents as the Lessee or the Agent, as the case may be, may agree to and as may be specified in such request, or execute and deliver such written waiver or modification of the terms of the Trust Documents as may be specified in such request; provided, however, that, without the consent of holders of at least a majority of the aggregate principal amount of the CSA Indebtedness then outstanding, no such supplement to this Trust Agreement or waiver or modification of the terms hereof shall modify the provisions of Section 1.03, Section 2.01(b), Section 3.01, Article VI, Article VII, this Article VIII, Section 9.01 or Section 9.02 hereof and, without the consent of the Investor, no such supplement to the CSA or waiver or modification of the terms thereof shall permit the creation of any lien on the Equipment or the "income and proceeds from the Equipment" (as defined therein), except as herein and in the CSA expressly permitted, or deprive the Agent or the Investor of the benefits of the CSA; and, provided, further, that the first sentence of Section 1.03 hereof shall not be amended without the consent of the Builders.

Section 8.02. If in the opinion of the Owner Trustee any document required to be executed pursuant to the terms of Section 8.01 hereof adversely affects any right or duty or liability of, or immunity or indemnity in favor of, the Owner Trustee under this Trust Agreement or the Trust Documents, the Owner Trustee may in its discretion decline to execute such document.

Section 8.03. It shall not be necessary for any written request of the Owner furnished pursuant to Section 8.01 hereof to specify the particular form of the proposed document to be executed pursuant to said Section 8.01, but it shall be sufficient if such request shall indicate the substance thereof.

Section 8.04. Promptly after the execution by the Owner Trustee of any document entered into pursuant to Section 8.01 hereof, the Owner Trustee shall mail a conformed copy thereof to the Owner, but the failure of the Owner Trustee to mail such conformed copy shall not impair or affect the validity of such document.

## ARTICLE IX

### Miscellaneous

Section 9.01. This Trust Agreement and the trust created hereby in any event shall terminate and this Trust Agreement shall be of no further force or effect upon the earlier of (a) the sale, transfer or other final disposition by the Owner Trustee of all property, including all right, title and interest of the Owner Trustee in and to the Trust Documents and the Equipment at any time part of any of the Trust Estate and the final distribution by the Owner Trustee of all money, other property and proceeds constituting the Trust Estate, as the Owner may at any time direct, or (b) 21 years less one day after the death of the survivor of the issue, living on the date of the earliest acknowledgment of the execution of this Trust Agreement of the present members of the Boards of Directors of the Owner Trustee and the Owner; provided, however, that if any such rights, privileges or options shall be or become valid under applicable law for a period subsequent to the 21st anniversary of the death of such last survivor (or, without limiting the generality of the foregoing, if legislation shall become effective providing for the validity or permitting the effective grant of such rights, privileges and options for a period in gross, exceeding the period for which such rights, privileges and options are hereinabove stated to extend and be valid), then such rights, privileges or options shall not terminate as aforesaid but shall extend to and continue in effect, but only if such nontermination and extension shall then be valid under applicable law, until such time as the same shall, under applicable law, cease to be valid, whereupon all money or other property or proceeds constituting part of the Trust Estate shall be distributed in accordance with the terms of Article II hereof; otherwise this Trust Agreement and the trust created hereby shall continue in full force and effect in accordance with the terms hereof.

Section 9.02. Irrespective of any other provision of this Trust Agreement, the Owner, at its sole option, may at any time after the full payment of all obligations under the CSA and the satisfaction thereof purchase all the Equipment from the Owner Trustee, for \$1 (One Dollar), or may at any time revoke this trust and vest in itself title to the Equipment, moneys or other property, proceeds and rights comprising the Trust Estate upon delivery of written instructions to such effect to the Owner Trustee. Upon receipt of such instructions, the Owner Trustee shall transfer in accordance with such instructions the Equipment, moneys or other property, proceeds and rights comprising the Trust Estate and the Trust created hereby shall thereupon terminate.

In the event of the transfer of the Equipment, moneys and other property, proceeds and rights comprising the Trust Estate to the Owner pursuant to the provisions of the preceding paragraph hereof, the Owner will (i) to the extent of the Trust Estate and to no greater extent, discharge the obligations of the Owner Trustee hereunder, and under the Trust Documents (as such obligations are limited in said instruments) and (ii) discharge the Owner's obligations pursuant to Section 1.03 hereof. Prior to any such transfer pursuant to this Section 9.02, the Owner will execute a written instrument or instruments in form and substance reasonably satisfactory to the Owner Trustee and its counsel, evidencing the Owner's full assumption of the aforementioned obligations of the Owner Trustee and file and record the same in all jurisdictions wherein any of the Trust Documents is filed and recorded. Nothing contained in this Section 9.02 shall be deemed to impose on the Owner any liability or obligation in the event that the trust created hereby is terminated (whether by operation of law or otherwise) other than expressly in accordance with the terms of this Section 9.02, except the Owner shall take all such action as is contemplated by the next preceding sentence of this paragraph.

Section 9.03. Any assignment, sale, transfer or other conveyance by the Owner Trustee of the interest of the Owner Trustee in the Trust Documents or any unit of Equipment, made pursuant to the terms of this Trust Agreement or the Trust Documents shall bind the Owner and shall be effective to transfer or convey all right, title and interest of the Owner Trustee and the Owner in and to the Trust Documents or such unit of Equipment. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such assignment, sale, transfer or conveyance or as to the application of any sale or other proceeds with respect thereto by the Owner Trustee.

Section 9.04. Unless otherwise expressly specified or permitted by the terms hereof, all notices shall be in writing, delivered or mailed by regular mail, postage prepaid, (i) if to the Owner Trustee, at 130 South LaSalle Street, Chicago, Illinois 60603, Attention of Corporate Trust Department, or such other address as may hereafter be furnished to the Owner in writing by the Owner Trustee, (ii) if to the Owner, at 70 Pine Street, New York, New York 10270, Attention of Assistant Manager, Domestic Investment Department or (iii) at such other address as a party may specify in accordance herewith. Whenever any notice in writing is required to be

given by the Owner Trustee or the Owner, such notice shall be deemed given and such requirement satisfied if notice is mailed by regular mail, postage prepaid, addressed as provided above.

Section 9.05. Any provision of this Trust Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 9.06. No term or provision of this Trust Agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party or other person against whom enforcement of the change, waiver, discharge or termination is sought; and any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given.

Section 9.07. This Trust Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 9.08. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Owner Trustee and its successors and assigns, and the Owner and its successors and, to the extent permitted by Article VI hereof, its assigns. Any request, notice, direction, consent, waiver or other instrument or action by the Owner shall bind its respective successors and assigns. Agreements herein expressed as being with third-party beneficiaries or requiring the consent of other parties shall inure to the benefit of such beneficiaries and parties and their permitted successors and assigns.

Section 9.09. The headings of the various articles herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 9.10. This Trust Agreement shall in all respects be governed by, and construed in accordance with, the laws of the State of Illinois, including all matters of construction, validity and performance.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by duly authorized officers, all as of the date first above written.

EXCHANGE NATIONAL BANK OF CHICAGO,

by

Michael D. Goodman  
Vice President

AIG EQUIPMENT LESSORS, INC.,

by

John P. Verel  
(Title) Vice President